IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1701 OF 2005

Vishwanath Nilkanth Datar .... Appellant

Vs.

The State of Maharashtra & Ors. .... Respondents

Shri A.K. Abhyankar i/b Shri N.V. Mhatre for Appellant.
Shri G.P. Mulekar, AGP for Respondent Nos. 1 & 2
Shri T.S. Ingale for Respondent No. 3.

CORAM : A.S. OKA, J.
DATE : 14TH DECEMBER, 2007

P.C.

1) Heard the submissions of the learned Counsel appearing for the parties.

2) The Appellant- original claimant in a Reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act") has taken an exception to the judgment and Award dated 27th July 2004 passed by the learned 5th Ad-hoc Additional District Judge, Kolhapur, by which a reference made under Section 18 of the said Act at the instance of the Appellant has been dismissed on the ground that the same is barred by limitation.

3) With a view to appreciate the submissions made by the learned Counsel appearing for the parties, it will be necessary to refer to the fats of the case in brief :

. The lands subject matter of acquisition is survey No. 560/4 (final Plot No. 608 and final Plot No.609) situated at Ichalkaranji, District Kolhapur. The acquisition proceedings were initiated under Section 126 of the Maharashtra Regional & Town Planning Act, 1966 read with the said Act. An Award was made under Section 11 of the said act on 17th December 1987 fixing the compensation at the rate of Rs.37/- per square meter. By office Order dated 15th December 1988, the Land Acquisition Officer directed that a part of the compensation being a sum of Rs.66,839/- payable under the Award shall be paid to one Shri Khot and one Shri N.D. Datar. By a further order dated 12th January 2001, the Land Acquisition Officer directed that the sum of Rs.66,839/- shall be payable to the present Appellant -claimant Shri Vishwanath Datar who is the adopted son of Late Shri N.D. Datar. An application under section 18 of the said Act was filed by the Appellant on 30th January 2001 with the Special Land Acquisition Officer. In the application, it is contended that the Award was finally amended on 12th January 2001

and no notice under Section 12(2) of the amended Award was served to the Appellant. Thus the contention in short is that the Reference application is filed within the stipulated period of limitation from 12th January 2001.

4) By the impugned judgment, the Reference Court held that the purported amendments to the Award will not save the period of limitations which starts from the date of declaration of the Award i.e. 17th December 1987. A finding has been recorded that on 13th October 1999, the Appellant made an application to the Special Land Acquisition Officer which discloses the knowledge of the original Award by the Appellant.

5) The submission of the learned Counsel for the Appellant is that the Award was modified by the Special Land Acquisition Officer by exercising powers under Section 13-A of the said Act and only by the last amendment made on 12th January 2001, the Special Land Acquisition Officer held that the Appellant was entitled to compensation. He pointed out that before the said order, the name of the Appellant did not figure in the original or amended Award and therefore the date of the Award will have to be taken as 12th January 2001. He submitted that in view of Clause (b) of Sub-Section 2 of

Section 18 of the said Act, the period of limitation available was of six months from 12th January 2001 and in fact the Reference application was filed within a period of six months from that date.

6) The second submission is that admittedly a notice as required by Section 9(3) of the said Act was not served to the Appellant. He submitted that consequence of the failure to serve the notice is that the Award itself is vitiated and therefore, the reference application will have to be treated as within limitation. He submitted that in any event the Award could not have been modified once it was filed and in the present case Award was admittedly filed on 17th December 1987.

7) I have given careful consideration to the submissions made by the learned Advocate for the Appellant. Section 18 of the said Act reads thus :

> **"18. Reference to Court** - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made, -

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award:

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

. Section 1 of Section 18 of the said Act enables any person interested who has not accepted the Award to make a written application to the Collector and require the Collector to refer the matter to the Court for determination of objection to the measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of the compensation amongst the persons interested. Thus, a remedy under Section 18 is available not only in a case where compensation offered to a claimant is on a lower side but also where he is denied compensation and the same is paid to other person who is not entitled to receive the same. Section 13(A) of the said Act reads thus :

> **13A. Correction of clerical errors etc.-** **(1)** The Collector may, at any time but not later than six months from the date of the award, or where he has been required under section 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority :
>
> Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.
>
> (2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.
>
> (3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrears of land revenue."

. The power under Section 13-A is only of correcting clerical or arithmetical mistakes or errors in the Award.

8) In so far as the period of limitation for filing an application under Section 18 of the said Act is concerned, the same is governed by the Proviso to Sub-Section 2 of Section 18. The proviso lays down on that if a person making a reference was present or represented before the Collector at the time when he made Award, the period of limitation will be six weeks from the

date of the Award. Where the person concerned is not present at the time of making an Award, the period of limitation provided is of six weeks from the receipt of notice under Sub-Section 2 of Section 12 of the said Act which is an intimation of declaration of the Award. In a case where the claimant is neither present before the Collector at the time of making an Award nor has received a notice under Sub-Section 2 of Section 12, the period of limitation is six months from the date of Collector's Award. In the present case, as far as Award dated 17th December 1987 is concerned, admittedly the Appellant was not present when the Award was made and admittedly notice under Section 12(2) has not been served to the Appellant. Therefore the limitation will be six months from the date of the Award. In this case the Application was made by the Appellant on 30th January 2001.

9) A submissions made by the learned Counsel for the Appellant regarding illegality of the Award. The said submission cannot be considered as in a reference under Section 18 of the said Act, the Court has no jurisdiction to go into the question of illegality and invalidity of the Award of the Acquisition proceedings. The only other submission made by the learned Counsel for the

Appellant is that the date of the Award will be 12th January 2001 when the name of the Appellant was incorporated in the Award. In short the submission is that the date of Award will have to taken as 12th January 2001.

10) Under the Section 13-A of the said Act, it is obvious that only clerical or arithmetical mistakes or the errors of the like nature can be corrected. Assuming that in the present case, order dated 12th January 2001 has been passed in exercise of powers under Section 13-A of the said Act, it is obvious that, the amendments made will relate to the date of the publication of the Award and therefore the starting point of limitation will be the date of the Award that is 17th December 1987.

11) It cannot be disputed that the reference application has been made as the Appellant did not accept the original Award dated 17th December 1987. The letter dated 13th October 1999 sent by the Appellant to the Special Land Acquisition Officer refers to the Award under Section 11 by referring to the Award number. It specifically records that the Appellant has learnt that the concerned land has been acquired under the said Award. In the said letter, it is mentioned that the Appellant was

the adopted son of Shri N.D. Datar and his predecessor has not taken compensation of Rs.66,839/-. Thus letter dated 13th October, 1999 proves that as on that date not only that the Appellant was aware of the date of the Award, but he was aware about the exact figure of compensation offered to his father. As of that date, the Appellant could have certainly applied under Section 18 of the said Act. Merely because his name does not figure in the Award, there was no prohibition against applying for a reference for establishing the entitlement to receive the compensation and for enhancement in the compensation. Thus the cause of action was certainly available to the Appellant to claim a reference under Section 18 atleast from 13th October 1999. Even from that day, the reference application is not filed within a period of six months. In fact the period of limitation will start from the date of the publication of Award and in the present case, the period of limitation will be six months from that day.

12) The learned Counsel for the acquiring body invited my attention to the decision of the Apex Court in the case of Purushottam v/s State of Gujarat, 2005 (7) SCC 431. The Apex Court held that "the period of limitation provided in the

later part of clause (b) of Sub-Section 2 of Section 18 of the said Act has to be computed having regard to the date on which the claimants got knowledge whether actual or constructive of the declaration of the Award. In the present case, the Appellant admittedly had actual knowledge of the Award as of 13th October 1999. It must also noted here that before 12th January 2001, on 15th December 1988, an order was passed by the Special Land Acquisition Officer holding that the Appellant's late father N.D. Datar was entitled to receive compensation of Rs.66,839/-. There is a reference in the application dated 13th October 1999 made by the Appellant to the said order dated 15th December 1988 which in turn specifically refers to the earlier Award dated 17th December 1987. The Appellant was aware of the said order dated 15th December 1988 atleast on 13th October 1999. Assuming that date of Award under Section 11 can be treated as 15th December 1988, still the reference application obviously time barred. As stated earlier, the staring of limitation is the date of the Award i.e. 17th December 1987 or the date of actual or constructive knowledge of Award which is 13th October 1999 in the present case. Thus reference application filed on 30th January 2001 was clearly barred by limitation.

13) In this view of the matter, no fault can be found with the impugned judgment and the Award. There is no merit in the Appeal and the same is dismissed with no order as to costs.

(A.S. OKA, J.)